

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of)	
)	
Federal-State Joint Board on Universal Service)	WC Docket No. 05-337
)	CC Docket No. 96-45
)	

To: The Federal-State Joint Board

**REPLY COMMENTS OF
CELLULAR SOUTH LICENSES, INC.**

Cellular South Licenses, Inc. ("Cellular South"), by counsel and pursuant to the Commission's *Public Notice*, "Federal-State Joint Board On Universal Service Seeks Comment On The Merits Of Using Auctions To Determine High-Cost Universal Service Support," FCC 06J-1, ___ FCC Rcd ___ (Jt. Bd. rel. Aug. 11, 2006) ("*Public Notice*"), hereby provides the following reply comments.

I. Introduction.

At this early stage, support for reverse auctions is thin, and the number and diversity of parties opposing the proposal is significant. From a legal perspective, attempting to craft an auction that will meet the Congressional goals set forth in Section 254 of the Act, while maintaining the Commission's core principle of competitive neutrality, is very difficult. A "winner take all" approach will not deliver the benefits of choice to rural consumers and will overwhelmingly favor incumbents with mature networks. It may also harm consumers by driving support below levels that are "sufficient" to provide the supported services throughout the ETC service areas at affordable rates and at acceptable service quality. From a practical

perspective, moving to auctions would appear to be trading in one set of complications for another.

Finally, a winner-take-all auction will not advance the critical universal service goal of providing rural consumers with similar choices in telecommunications services and service providers as are available in urban areas. It will be a regulatory directive that rural areas are not deserving of the benefits of competition now flourishing in urban America.

II. Auctions Cannot Yield Competitively Neutral Results Until Competitive Networks Exist.

We agree with the Commission's previous assessment that "it is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future. Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future."¹ Use of auctions for USF support would not yield the right result if one carrier (e.g., the ILEC) is fully built out in the area, and the other(s) (e.g., the competitive ETCs such as wireless carriers) have immature networks.

Until there are mature wireless networks and regulators can determine that an area is competitive, the use of auctions will not be competitively or technologically neutral. A carrier with an immature network, that needs substantial capital to construct network facilities throughout an area, cannot reasonably be expected to bid competitively against a carrier that has already completed a network build-out and does not require such capital.

This is true even if the newcomer is substantially more efficient, because it is impossible to know what to bid until a network has been fully constructed. Once a competitive network has

¹ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8950-51 (1997) ("First Report and Order").

been constructed, a competitor will have sufficient information regarding construction and operating costs to bid on a level playing field with an incumbent.

On the other hand, in a “winner-take-all” auction, an incumbent that has a fully developed network will have a significant incentive to artificially underbid its competition knowing that its reward for taking less support will be locking out competition. The end result is that consumers lose the benefits of competition and they likely receive far less investment from the auction winner than is needed to maintain high quality telecommunications service.

In sum, any auction that goes forward with networks of varying maturity will naturally favor the more mature network and thus fails the test of competitive neutrality.

III. Many of the Issues Raised in the Comments Were Decided Several Years Ago.

Between 1996 and 2001, the Commission released a series of orders implementing the 1996 Act. In each order, the Commission consistently developed policies to adapt universal service to a competitive marketplace.² The Fifth Circuit in *Alenco* affirmed almost all of the FCC’s universal service policies contained in its *First Report and Order* and its *Fourth Order on Reconsideration*.³ Likewise, the court in *TOPUC* affirmed the core of the Commission’s high-cost universal service program.⁴

It is thus difficult to understand why some commenters advocate as if the Commission’s core principles and decisions—adopted over many years, with the Joint Board’s recommendations, and affirmed by the courts—are up for discussion in this proceeding. We think that the Joint Board’s first order of business, before any substantive issues on reverse

² See, e.g., *Federal-State Joint Board on Universal Service, Seventh Report & Order, and Thirteenth Order on Reconsideration* in CC Docket No. 96-45 *Fourth Report & Order* in CC Docket No. 96-262 and *Further Notice of Proposed Rulemaking*, 14 FCC Rcd 8078, 8086 (1999).

³ *Alenco, et al v FCC*, 201 F.3d 608 (5th Cir. 2000) at n.1.

⁴ *Texas Office of Public Utility Counsel v FCC*, 183 F.3d 393 (5th Cir. 1999).

auctions are addressed, should be to make clear that this proceeding is not about reversing the Commission's core mission and principles, which have guided all decisions since 1996.

To illustrate, the Commission has adopted a core principle that all universal service rules and policies must be competitively neutral, and not favor one technology over another.⁵ If competitive neutrality is to be honored, the field of suggestions can be narrowed substantially. For example, CenturyTel incorrectly claims that since growth in the fund comes from multiple ETCs being designated in one area, support should be limited to only one CETC.⁶ CenturyTel ignores the fact that the Commission specifically intended for the fund to grow when it gave special treatment to rural ILECs. For example, the Commission declined to cap support upon competitive entry so as to make support "fully portable." When competitors get customers they gain support and when they lose customers they lose support.⁷ But rural ILECs who lose customers retain the same (or higher) levels of support.

WTA and ITTA claim that portability of access support is a "windfall" for competitive carriers.⁸ Others claim that Interstate Access Support ("IAS") and Interstate Common Line Support ("ICLS") are merely "access replacement" and apparently not universal service support.⁹ The Act and the Commission's longstanding precedents hold otherwise.

The theory that competitive carriers do not "deserve" access support because they have not traditionally received access revenues was long ago rejected by the Commission. Following protracted rulemaking proceedings, the Commission has removed substantial implicit subsidies

⁵ *Federal State Joint Board on Universal Service, Report & Order*, 12 FCC Rcd 8776, 8801 (1997).

⁶ CenturyTel Comments at pp. 11-12.

⁷ *First Report and Order*, *supra*. 12 FCC Rcd at 8933.

⁸ WTA Comments at p. 8; ITTA Comments at p. 22.

⁹ Centurytel Comments at p. 12.

from both non-rural and rural carrier access charges.¹⁰ IAS and ICLS are examples of formerly implicit support that has been made explicit. The sole justification for the creation of these funds was that ILECs needed the revenue streams (formerly from access) in order to provide universal service. If the revenue represents universal service support and is funded by universal service contributions, it must be portable. Conversely, if it is not universal service, then there is no justification for providing the guaranteed revenue stream to the ILECs (or any other class of carrier), and these funds should be eliminated altogether.

With respect to IAS, the Commission has stated:

By simultaneously removing implicit subsidies from the interstate access charge system and replacing them with a new interstate access universal service support mechanism that supplies portable support to competitors, this Order allows us to provide more equal footing for competitors in both the local and long-distance markets, while still keeping rates in higher cost areas affordable and reasonably comparable with those in lower cost areas.¹¹

With respect to ICLS, the Commission has stated:

Our actions are consistent with prior Commission actions to foster competition and efficient pricing in the market for interstate access services, and to create universal service mechanisms that will be secure in an increasingly competitive environment. ***By simultaneously removing implicit support from the rate structure and replacing it with explicit, portable support, this Order will provide a more equal footing for competitors in the local and long distance markets, while ensuring that consumers in all areas of the country, especially those living in high-cost, rural areas, have access to telecommunications services at affordable and reasonably comparably rates.*** This Order also is tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas, and will help provide certainty and stability for rate-of-return carriers,

¹⁰ *Access Charge Reform, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45*, 15 FCC Rcd. 12,962 (2000) (“Sixth Order”); *Multi-Association Group (MAG) Plan For Regulation Of Interstate Services Of Non-Price Cap Incumbent Local Exchange Carriers And Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd. 19,613 (2001) (“MAG Order”).

¹¹ *Sixth Order*, 15 FCC Rcd. at 12,964

encourage investment in rural America, and provide important consumer benefits.¹²

In addition to conflicting with universal service policy, any suggestion to cut off IAS to competitive ETCs would not accomplish its stated objective. IAS is frozen at \$650 million per year and “fully portable” to CETCs.¹³ Thus, CETC draws from the fund reduce the amount flowing to ILECs. In short, if there were no CETCs, the IAS fund level would be the same. The only possible effect of denying IAS to competitors would be to “discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.”¹⁴

To date, no party has presented any evidence that making IAS fully portable has reduced investment by non-rural ILECs; there is, however, a wealth of data showing how CETCs in non-rural areas have used support to construct new network facilities benefiting consumers. Over the past four years, Cellular South has used high-cost support in Mississippi and Alabama to construct hundreds of cell sites to bring improved coverage and service quality to rural consumers.

Last year, when Hurricane Katrina came ashore, Cellular South’s network was operational for first responders within one day and was fully restored within nine days. When hundreds of thousands of displaced persons moved northward away from the Gulf Coast, Cellular South had a high-quality network with sufficient coverage and capacity to permit vital

¹² *MAG Order*, 16 FCC Rcd. at 19,617 (emphasis added).

¹³ *Sixth Order*, 15 FCC Rcd. at 12976 (“The CALLS Proposal identifies and removes \$650 million of implicit universal service support in interstate access charges, creates an explicit interstate access universal service support mechanism in this amount to replace the implicit support, **and makes interstate access universal service support fully portable among eligible telecommunications carriers**; IAS is also disaggregated so that support is targeted to high-cost areas”) (emphasis added).

¹⁴ *Federal-State Joint Board on Universal Service, Ninth Report & Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20480 (1999) (footnotes omitted) (“*Ninth Order*”).

communications to continue. No landline network, no matter how well engineered, is capable of providing service throughout large areas in a manner similar to mobile wireless networks.

Suggestions that existing or future support mechanisms should be reserved to ILECs is antithetical to the Act and the universal service principles implemented by this Commission over the past ten years. From the many Commission pronouncements, we think this best captures where the law is – and where it must remain:

We reiterate that ***federal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and conclude that the same amount of support (i.e., either the forward-looking high-cost support amount or any interim hold-harmless amount) received by an incumbent LEC should be fully portable to competitive providers.*** A competitive eligible telecommunications carrier, when support is available, shall receive per-line high-cost support for lines that it captures from an incumbent LEC, as well as for any "new" lines that the competitive eligible telecommunications carrier serves in high-cost areas. ***To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line, including any interim hold-harmless amount.*** While hold-harmless amounts do not necessarily reflect the forward-looking cost of serving customers in a particular area, we believe this concern is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors. ***Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.***¹⁵

In sum, while there is work to be done to improve universal service mechanisms, the principles underlying these mechanisms have not changed. The Commission must act in a competitively neutral fashion, consistent with the promotion of both universal service and

¹⁵ *Id* (emphasis added); see also *Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-7, 13 FCC Rcd. 5318 ("Fourth Order")*.

competition in rural areas – *not* in a manner that favors one class of carrier or otherwise limits competitive entry.¹⁶

IV. Reform of the Existing Program as Contemplated in 2001 Should Be Completed Before Considering Reverse Auctions.

In its 2001 *RTF Order*, the Commission's stated desire to ensure that rural ILECs continued to invest in America's rural areas was sound.¹⁷ The Commission committed to make adjustments needed to ensure that the program continues to advance the 1996 Act's goals while maintaining financial integrity. Since 2001, the Commission has released no orders addressing the underlying structural issues that it committed to address.

There are several reforms that the Commission can make that would yield a far superior universal service system than would auctions. Specifically, Cellular South advocates, (1) moving support for areas served by rural ILECs to the cost of building an efficient network; (2) targeting support to the highest-cost areas; and (3) making the fund "fully portable" by freezing support to an area upon competitive entry. In its *RTF Order*, the Commission anticipated completing steps (1) and (3) by 2006 and partially implemented Step 2 (by allowing rural ILECs the option to not target support upon competitive entry)

We will use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service plan that better targets support to rural telephone companies serving the highest cost areas and recognizing the significant distinctions among rural carriers and between rural and non-rural carriers. In addition, we would include in that comprehensive review

¹⁶ *Alenco et al. v FCC*, 201 F 3d 608, 620 (5th Cir. 2000) ("The Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*.")

¹⁷ *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11264 (2001) ("*RTF Order*").

consideration of general issues related to excessive fund growth and competitive neutrality.¹⁸

Commenters claiming that a forward-looking cost model would “discourage investment” in rural areas¹⁹ ignore the fact that the model works successfully in many rural areas today. Non-rural ILECs serve some of the most remote and difficult to serve areas in the country, including very mountainous terrain in Maine, Vermont, West Virginia, Kentucky, and remote parts of Montana, Nebraska, Mississippi and Alabama. The non-rural high-cost support system is far superior to that which is used by rural carriers in that it does not reward inefficient investment and does not allow carriers to gain more support by investing more, irrespective whether such investments are efficient or even necessary. There is no reason why the mechanism for non-rural carriers, which provides high-cost support based on the cost of constructing an efficient network, cannot be modified for areas served by rural carriers.

The current non-rural mechanism targets support to the highest-cost wire centers. That is, when a CETC enters a non-rural area, there are many low-cost wire centers within which it receives little or no support. Likewise, competitors have an incentive to build facilities in high-cost wire centers – precisely where investment should be made. The Commission has adopted rules for targeting support to areas served by rural ILECs, yet the failure to make them mandatory upon competitive entry has artificially increased overall support. This is because competitors typically have already constructed networks in low-cost wire centers before applying for ETC status. Accurately targeting support is critical to driving benefits to consumers living in the most remote areas, who need the benefits of new investment the most. Attached as Exhibit

¹⁸ *RTF Order, supra.* at 11,310

¹⁹ *See* TDS Comments at pp. 16-17.

A, we have provided an example of how targeting support reduces support to a competitive carrier.

Third, making support fully portable is a key to sustaining the fund. That is, the Commission should freeze support to an area upon competitive entry so that fund growth is controlled and all carriers are forced to compete for both customers and support. As in a competitive market, ETCs that lose customers would lose universal service funding formerly associated with serving that customer. This will further the Act's requirement to balance the advancement of universal service in a competitive marketplace.

Five years ago, the Commission committed to working through meaningful reforms by 2006. Had the reforms suggested above been implemented, today we would have a wealth of useful data that would inform the Commission whether more radical reform is required. USCC believes these modest reforms should be immediately implemented to both sustain the system and promote competitive entry throughout the nation.

Cellular South urges the Joint Board to address specific reforms within the existing universal service program's framework. Implementing reverse auctions, if they are to be adopted at all, is a long-term project. In the meantime, reform steps can and should be implemented.

V. Moving to a Reverse Auction Regime Would Be More Complicated Than Refining the Existing Distribution Mechanism.

Most commenters oppose implementing reverse auctions as a means of distributing high-cost support. Rural ILEC commenters were virtually unanimous in opposition. Literally scores of objections were raised, many focusing on the complications of conducting reverse auctions, similar to those discussed by Cellular South in its comments. In a vacuum, an auction methodology is capable of wringing excess support out of the system, especially for rural ILECs

that receive support either on “the more you spend, the more you get,” or pursuant to an “average schedule” that estimates costs.

However, at this early stage, when competitors are literally just getting off the ground in building new networks out in rural America, it is extraordinarily difficult to conduct a fair auction process given the enormous advantages of incumbency. For example, Congress determined that rural ILEC study area boundaries would be the geographic foundation for universal service designations.²⁰ Over the years, it has become apparent that the many FCC-licensed boundaries for competitors make the regulator’s job of determining ETC service areas very difficult.

Moving to auctions that are competitively neutral and do not favor incumbents will require all participants to bid on an identical geographic area. It is a fundamental auction principle that every participant must be bidding on the same thing. Since 1996, ETC service areas for competitors have been drawn based generally on ILEC study areas and constituent wire centers. Competitors have many different service areas, for example, MSA, RSA, MTA, BTA, EA, or REAGs. With the presence of many and diverse FCC-licensed boundaries, the only way to make auctions viable is to define the service areas for auction at the smallest possible level, so as to not prejudice any class of carrier.²¹

The proposal which would require auction winners to enter into contracts introduces enormous complexities. Contracts between auction winners and regulators would be very challenging to implement. Moreover, enforcement of contracts by regulators has yielded a

²⁰ 47 U.S.C. Section 214(e).

²¹ See RCA Comments at 10; Dobson Comments at 7; AT&T Comments at 13.

mixed bag of results, including some cases that have wasted significant and valuable resources.²² Most commenters who addressed the subject believe that requiring hundreds or even thousands of contracts to be negotiated is a non-starter.²³

To the extent that auctions are considered, Cellular South believes a “winner take all” system disserves consumers and the public interest. Limiting support to a single auction winner (or two winners as some have proposed) artificially determines the number of effective competitors in any market area. Limiting competition, whether as a result of monopoly power or regulators choosing marketplace winners, is antithetical to the 1996 Act. Moreover, limiting universal service support to only one competitive provider, and presumably compensating that provider for the cost of constructing an entire network, would not result in less support being paid out than a system of providing per-line support based on the costs of constructing an efficient network, to any number of carriers, using any technology that can deliver the supported services and willing to compete.

Those who argue against the receipt of support by multiple competitors in a given area²⁴ fail to realize that it is impossible to subsidize the cost of constructing multiple networks in their entirety. This is because the amount of support in any given area is effectively capped by the number of customers within that area. That is, CETCs only receive support when they win a customer and lose support when they lose a customer. So if there are 100 customers in a remote area, CETCs that serve the area would compete for those 100 customers, and no more than 100 connections will be supported. Because competitors have to fight over a fixed number of

²² See, e.g., *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 123 S.Ct. 832, 154 L.Ed.2d 863 (2003).

²³ See, e.g., CenturyTel Comments at p. 19; WTA Comments at p. 26

²⁴ See, e.g., Fairpoint Comments at p. 10; CenturyTel Comments at p. 22 n.40

customers, it matters not how many CETCs are designated. No carrier capable of providing the supported services is discouraged from trying to enter, yet no carrier is guaranteed to receive any support unless consumers choose its service. Thus, an auction system would be inferior to the current “per-line” support mechanism because it would chill competition.

In fact, the pre-1996 Act implicit universal service system was the single biggest factor preventing competition from coming to rural areas. As a result, Congress in the 1996 Act directed the Commission to remove high-cost support from carrier rates and place it into an explicit mechanism from which *all* qualified carriers can draw. The purpose of making support explicit was to allow any carrier providing the supported services, using any technology, to capture customers and draw from the fund.²⁵ Rather than use auctions to go backward and limit competition, the far better course is to let the marketplace determine the appropriate number of competitors so as to usher in the new era of competition promised in the 1996 Act.

VI. Conclusion

It is certainly possible to balance the need to sustain support mechanisms for areas served by rural ILECs with the goal of ensuring that consumers continue to receive high-quality services as competition develops. The Commission has repeatedly affirmed its Congressional mandate to develop competitively neutral universal service mechanisms that encourage efficient competitors to enter. For example:

Our decisions here are intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier. We conclude that competitively neutral rules will ensure that such disparities are minimized *so that no entity receives an unfair competitive advantage that may skew the*

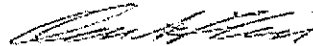
²⁵ See, e.g., Section 254(e) (“Any such support should be explicit and sufficient to achieve the purposes of this section.”).

*marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.*²⁶

As of this writing, wireless consumers are contributing far more than they are getting from the program, despite the clear indication that for many consumers wireless service is fast becoming the preferred means of receiving the supported services.²⁷ The appropriate policy choice must be to continue the work of reforming universal service mechanisms so as to encourage efficient competitive entry in rural areas. Any attempt to manage or limit competition will only create economic distortions that the 1996 Act intended to remove.

Respectfully submitted,

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²⁶ *First Report and Order*, *supra*, 12 FCC Rcd. at 8802. *See also Sixth Order*, *supra*, 15 FCC Rcd at 13,007-08 (“We found that deaveraged rates more closely reflect the actual cost of providing service, which promotes competition and efficiency by allowing a LEC to compete for subscribers when it is the lowest cost service provider, and by removing support flows to the LEC’s higher-cost services. Prices that are below cost reduce the incentives for entry by firms that could provide the services as efficiently, or more efficiently, than the incumbent LEC.”).

²⁷ *See Rural Cellular Association Comments* at pp. 2-3.

Exhibit A

EXAMPLE OF SUBSIDY LEVELS BEFORE AND AFTER DISAGGREGATION

Note: The chart below reflects the affect of an actual ILEC plan of disaggregation on one carrier. Further analysis would be needed to determine nationwide impact.

CARRIER: Highland Cellular, Inc., West Virginia¹⁵

Table 1

Wire Center Name	Number of Customers	Support Available	Total
Athens	686	\$11.92	\$8,177.12
Bluefield	3,470	\$11.92	\$41,362.40
Bluewell	640	\$11.92	\$7,628.80
Bramwell	113	\$11.92	\$1,346.96
Matoaka	239	\$11.92	\$2,848.88
Oakvale	198	\$11.92	\$2,360.16
Princeton	4,521	\$11.92	\$53,890.32
Frankford	282	\$37.72	\$10,637.04
Rupert	27	\$16.80	\$453.60

TOTAL WITHOUT DISAGGREGATION: \$128,705.28

Table 2

Wire Center Name	Number of Customers	Support Available	Total
Athens	686	\$38.24	\$26,232.64
Bluefield	3,470	\$0.00	\$0.00
Bluewell	640	\$20.44	\$13,081.60
Bramwell	113	\$20.44	\$2,309.72
Matoaka	239	\$38.24	\$9,139.36
Oakvale	198	\$38.24	\$7,571.52
Princeton	4,521	\$0.00	\$0.00
Frankford	282	\$34.04	\$9,599.28
Rupert	27	\$23.80	\$642.60

TOTAL WITH DISAGGREGATION: \$68,576.72

¹⁵ Note: Highland Cellular was recently acquired by American Cellular Corp , a subsidiary of Dobson Communications Corp